

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FLOYD ALLEN HARDRICK,  
JR., *et al.*,

Plaintiffs,

v.

THE CITY OF DETROIT, *et*  
*al.*,

Defendants

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Case No. 2:15-cv-13884  
District Judge Nancy G. Edmunds  
Magistrate Judge Anthony P. Patti

**ORDER HOLDING IN ABEYANCE DEFENDANTS' MOTION TO  
DISMISS AND GRANTING INTERIM RELIEF (DE 44)**

This matter is before the Court for consideration of Defendants' motion to dismiss Plaintiffs Christie Nelson and Kaitlyn McNay-Collins (DE 44), Plaintiffs' response (DE 52), and the parties' joint statement of resolved and unresolved issues (DE 65). In their motion, Defendants ask the Court to dismiss Plaintiffs Nelson and McNay-Collins for failing to appear at their respective depositions. Plaintiff Nelson has failed to appear for two depositions: the first due to child-care issues and the second due to transportation issues. Plaintiff McNay-Collins has failed to appear for one deposition without explanation, and her counsel has been unable to contact her since December 2015.

For the reasons stated on the record, Defendants' motion is granted in part to the extent that, pursuant to Federal Rule of Civil Procedure 37(d)(1)(A), Plaintiffs

Nelson and McNay-Collins are prohibited from supporting or opposing their claims and defenses with their own affidavits or declarations in response to Defendants' pending motion for summary judgment.<sup>1</sup> However, I find the remainder of Defendants' motion to dismiss to be premature. As such, I hold the motion in abeyance and order the following:

1. Plaintiff Nelson shall appear in my courtroom, in room 624 of the Theodore Levin Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226, on **SEPTEMBER 13, 2016 at 10:00 a.m.** for her deposition. If she fails to appear for the third time, she is at the risk of my issuing a report which recommends that her claims be dismissed pursuant to Rule 37(d).
2. Plaintiff McNay-Collins shall appear in my courtroom, in room 624 of the Theodore Levin Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226 on **SEPTEMBER 13, 2016 at 10:00 a.m.**, at which time she will be personally required to show cause as to why the Court should not dismiss her claims and why the Court should instead allow her deposition to go forward. If she provides the Court with good cause, her deposition will occur that day, in my jury room. If she does not appear or fails to otherwise provide good

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<sup>1</sup> If Defendants choose to supplement their motion for summary judgment using information from the depositions of McNay-Collins and/or Nelson, however, Plaintiffs may use their affidavits, declarations, and/or deposition testimony in response.

cause, she is at the risk of my issuing a report which recommends that her claims be dismissed pursuant to Rule 37(d).

3. Within fourteen days of the date of this order, Defendants shall file their bill of costs for the missed depositions. Plaintiffs shall have five days from service of that document to file any objections.

**IT IS SO ORDERED.**

Dated: August 3, 2016

s/Anthony P. Patti

Anthony P. Patti

UNITED STATES MAGISTRATE JUDGE

I hereby certify that a copy of the document was sent to parties of record on August 3, 2016, electronically and/or by U.S. Mail.

s/Michael Williams

Case Manager for the

Honorable Anthony P. Patti